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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

NO. 40

RECONSTRUCTION FINANCE CORPORATION, SUCCESSOR TO DEFENSE PLANT CORPORATION, Appellant,

v.

COUNTY OF BEAVER, PENNSYLVANIA.

Appeal from the Supreme Court of the Commonwealth of Pennsylvania.

BRIEF FOR COUNTY OF ALLEGHENY, PENNSYLVANIA, AMICUS CURIAE.

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The County of Allegheny, Pennsylvania, is interested in the question involved in this appeal by reason of the present pendency of a number of appeals from assessments of Defense Plant Corporation plants located within it, and whose decision will be governed by the result of this appeal. Accordingly, it files this brief as *amicus curiae* under the permission of Rule 27, par. 9, of this Court.

The Brief for County of Beaver, appellee in this case, presents a comprehensive treatment of the issue involved. As *amicus curiae*, Allegheny County endorses

the entire argument therein contained. It would seem to prove conclusively that unless Congress intended local law to govern the meaning and scope of the term "any real property" the plain purpose of the Act involved is defeated. It was waiving the normal immunity from local taxation of such property. How could its objective be accomplished otherwise than by application of local law in determination of the meaning of that term?

Respectfully submitted,

EDWARD G. BOTHWELL,
First Assistant County Solicitor,
Attorney for County of Allegheny,
Pa., *Amicus Curiae.*

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Appellee.

STATEMENT OF THE CASE

A. Appellant's Properties in California

The value of Appellant's properties in California exceeds $100,000,000. The taxes levied by local California taxing agencies on these properties exceeded $2,000,000 in 1944, and were of a like amount in 1945.

Thus far Appellant has conceded that taxes were properly levied against its land and buildings (including the floors, walls, roofs, heating systems, and plumbing systems), but has contended that its manufacturing equipment is personal property and is therefore exempt. It therefore contends that from

two-thirds to three-fourths of the taxes have been illegally assessed, for in most instances the assessed value of the machinery and equipment is several times the value of the land and buildings.

Some of the machinery which Appellant owns in California is similar to that installed in the Beaver County plant of the Curtis-Wright Corporation. But Appellant also owns oil refineries and synthetic rubber plants where the equipment consists principally of pumps, tanks, boilers, blower units, compressors, and heat exchangers, only a small portion of which are located within the walls of buildings. In these plants fluids and gases move continuously through the equipment, pipes, tubes, and tanks, the bulk of the equipment being joined together to form a homogeneous unit for production. Some idea of the character of the equipment in these plants may be gleaned from two photographs of Appellant's Richmond, California, gasoline refinery (Op. p. 23.)

Somewhat similar are the plants in which aluminum is refined. The equipment is specially designed and centers around the reduction pots in which aluminum oxide is reduced to metallic aluminum. Each of these plants includes a large electric substation in which current is reduced from high to low voltage and converted from alternating to direct current, and equipment used for bringing the ore to the reduction pots and for hauling the metal away. Photographs of a reduction pot and the rectifiers installed at Appel-

lant's Riverbank (Stanislaus County) plant appear following p. 22.

In addition, there is a completely equipped extrusion foundry, a completely equipped plant for the manufacture of copper pipe and tubing, a magnesium plant and a steel plant, and many other installations. There are overhead cranes in most of the buildings and gantry cranes in open yards.

There are also the more conventional types of plants (like the Curtis-Wright plant) which are equipped principally with lathes, grinders, drills, presses, and other machine tools. In these plants airplanes, airplane parts, and marine engines were manufactured. The value of these machine tools is substantial although it represents but a small part of the machinery and equipment located in California which Defense Plant contends is exempt under Section 10 of the R. F. C. Act.

The machine tools are installed in many different ways although in most cases they are placed upon specially constructed concrete foundations and are held in place by bolts or screws.

B. Appellant's Contentions

While it is doubtful that the machinery in any of Appellant's California factories has been moved as much as the machinery in the Curtis-Wright plant, the argument advanced by Appellant would, if accepted by the Court, preclude the taxation of the bulk of the California machinery and equipment, for Appellant argues that land and buildings alone are taxable.

We take issue with Appellant's contention that Congress intended that a uniform interpretation of the words "real property" should be applied throughout the country, and we also believe that appellant has erred in stating the general law with respect to fixtures.

STATUTES INVOLVED

Section 10 of the Reconstruction Finance Corporation Act reads as follows:

> "Any and all notes, debentures, bonds, or other such obligations issued by the corporation shall be exempt both as to principal and interest from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or thereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority, except as provided in section 742a (a) of Title 31. The corporation, including its franchise, its capital, reserves, and surplus, and its income shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority; *except that any real property of the corporation shall be subject to State, Territorial, county, municipal, or local taxation to the same extent, according to its value as other real property is taxed.* The exemptions provided for in the preceding sentence with respect to taxation (which shall, for all purposes, be deemed to include sales, use, storage, and purchase taxes) shall be construed to be applicable not only with respect to the Reconstruction Finance Corporation

but also with respect to (1) the Defense Plant Corporation, the Defense Supplies Corporation, the Metals Reserve Company, the Rubber Reserve Company, and any other corporation heretofore or hereafter organized or created by the Reconstruction Finance Corporation under section 606b of this title, as amended, to aid the Government of the United States in its national-defense program, (2) The RFC Mortgage Company, the Federal National Mortgage Association, and any other public corporation heretofore or hereafter organized by or at the instance of the Reconstruction Finance Corporation, and (3) the Disaster Loan Corporation, and any other public corporation which is now or which may be hereafter wholly financed and wholly managed by the Reconstruction Finance Corporation. Such exemptions shall also be construed to be applicable to the loans made, and personal property owned, by the Reconstruction Finance Corporation or by any corporation referred to in clause (1), (2), or (3) of the preceding sentence, *but such exemptions shall not be construed to be applicable in any State to any buildings which are considered by the laws of such State to be personal property for taxation purposes.*" (Italics added.)

It will be noted that the words "real property" are not defined in the statute. However, almost all of the 48 States do have a statutory definition of the term. The California definitions are printed in the appendix.

SUMMARY OF THE ARGUMENT

The question involved is one of statutory construction. Congress intended that the various local defini-

tions of "real property" should be applied in determining the taxability of property belonging to the corporation because it was concerned primarily with uniformity within States rather than uniformity throughout the country. The intent is apparent from the language of the statute itself, and is also to be inferred from the fact that the members of Congress were familiar with the fact that there were wide variations between the tax systems of the several States.

Even if it should be concluded that Congress intended the words "real property" to be interpreted uniformly throughout the country, Congress intended that machinery should be taxed as real property. The courts of most of the States have determined that machinery is real property, and there is no support for Appellant's theory that the land and buildings alone are taxable.

ARGUMENT

At the outset it may be observed that this brief is written upon the assumption that the Defense Plant Corporation is an instrumentality of the United States and upon the further assumption that the supremacy clause gives Congress the power to mark the limits within which the States may tax the corporation. (*Federal Land Bank* v. *Bismark Lumber Co.*, 314 U. S. 95.)

Congress has declared the corporation to be exempt from most taxes but it has specifically provided that its real property "shall be subject to * * * local

taxation to the same extent according to its value as other real property is taxed." California contends that by the use of this language Congress has authorized it to tax the machinery and equipment installed by Defense Plant Corporation in its California factories.

I. Congress Intended that Local Definitions Should Be Followed

A. LEGISLATIVE HISTORY

There is little in the legislative history which is of assistance. The R. F. C. Act was enacted in 1932. It was amended in 1941. There was little discussion of the real property problem in Congress on either occasion although in 1941 a proviso was added that "such exemptions shall not be construed to be applicable in any State to any buildings which are considered by the laws of each State to be personal property for taxation purposes."

Both sides claim to draw comfort from the enactment of this amendment. It seems to us, however, that the amendment was enacted because Congress believed that local definitions of real property were to be applied instead of a general definition and because it wished a general interpretation to be applied in that one particular instance. Under Michigan law buildings erected on leased land are treated as personal property for taxation purposes. It was because Congress thought that this definition would control that it added the amendment. The 1941 legislation indicates a belief on the part of Congress that

the property of appellant was to be taxed as other property was taxed in the several States. There is no indication that when Congress enacted this amendment it thought that appellant's properties were to be taxed the same throughout the country.

B. SECTION 5219 OF THE REVISED STATUTES AND SECTION 10 OF THE R. F. C. ACT SHOULD BE CONSIDERED TOGETHER

The language of the R. F. C. Act is taken almost word for word from Section 5219 of the Revised Statutes, enacted in 1878. That section provided that "* * * Nothing herein shall be construed to exempt the real property of (national banking) associations from either state, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed."

Section 5219 was enacted for the purpose of preventing discriminatory taxation against National banks and Section 10 of the R. F. C. Act was enacted for the same purpose. The fact that the States might indulge in discriminatory taxation against national banks had been demonstrated. (See *McCulloch v. Maryland*, 4 Wheat. 738; *Osborn v. Bank of the United States*, 9 Wheat. 738.

The reason for the denial of the privilege of taxing the personal property of National banks is not obscure. Banks invest their capital in personal property. Taxes on bonds, mortgages and cash would bear heavily on banks. A nondiscriminatory tax on cash would be discriminatory in effect if the banks had all the cash. But it was not contemplated that

the banks would invest in real estate. They were authorized to acquire their banking premises and to acquire real property upon the foreclosure of mortgages, but Congress did not wish the banks to hold real property as an investment. A nondiscriminatory tax on real property could not operate in a discriminatory manner and an exemption of real property would encourage the holding of real property by banks, something Congress did not want.

The same reasoning must have activated Congress in applying this exemption to the R. F. C. It was anticipated that it would acquire intangible property of considerable value and that it would acquire real property only when it was forced to foreclose mortgages. Ordinarily, a nondiscriminatory tax on real property would not interefere with the R. F. C. for Congress did not contemplate that the corporation would hold substantial amounts of real property.

When the acquisition and construction of industrial plants by Defense Plant Corporation and by Rubber Reserve Corporation was authorized no change was made in the wording of Section 10. The language of the statutes enacted to deal with banking corporations was left to apply to the new corporations. Congress must have been satisfied to permit their real property to be taxed as the real property of National banks had been taxed.

Since 1878 National banks located in Pennsylvania have, no doubt, foreclosed mortgages on factories located in that State and after foreclosure, have paid

taxes on the factories as a whole (land, buildings, and machinery). On the other hand National banks in Ohio have paid no taxes on machinery for that State treats machinery as personal property for purposes of taxation. It would have been idle to argue to the courts of Pennsylvania or Ohio that Congress intended that a uniform definition of real property should be applied in each of the States. Congress did not care whether National banks in Maine bore the same burden of taxes as National banks in California. (It gave the States a number of alternatives with respect to the taxation of bank shares). But Congress did consider it vital that a National bank in Maine should be treated no worse than a State bank in Maine. The legislation was aimed at discrimination within the States and its goal was uniformity within the States.

For example, California treats bank vault doors as real property and taxes both State and National banks thereon.[1] Ohio probably follows a contrary rule.[2] Local definitions are controlling. If Section 5219 required California to apply the Ohio rule then National banks in California would be given a preference over California State banks. This was not what Congress intended.

When Congress used the same language with respect to the exemption of the R. F. C. from taxation, it contemplated that the language would be interpreted

[1] *San Diego Trust & Savings Bank* v. *County of San Diego*, 16 Cal. 2d 142; ___ Pac. 2d ___; Cert. denied 312 U. S. 679; and see *Trabue Pittman Co.* v. *County of Los Angeles* ___ Adv. Cal. ___ (decided April 9, 1946).)

[2] (Compare *Zangerle* v. *Standard Oil Co.*, 144 Ohio St. 529, 60 N.E. 2d 52.)

in the same way. Some States specifically exempt manufacturing plants from taxation. If the R. F. C. foreclosed a mortgage on a factory in those States, it would pay no taxes. Other States specifically exempt machinery from taxation, and still others provide that machinery shall be classified as personal property for purposes of taxation. But in some States statutes provide that it shall be classified as real property for purposes of taxation, and in many more States the courts have reached the same result.

Congress subjected the property of the R. F. C. to any of the various systems of taxation which might be applicable to it. It was primarily concerned that the States should not discriminate against the corporation by taxing its intangible property. It did not contemplate that upon foreclosure of a mortgage on a factory by the R. F. C. it should be in any better position with respect to local property taxation than a National bank or a State bank.

In discussing R.S. 5219 the Government cites *People* v. *National Bank of P. O. Mills & Co.*, 123 Cal. 53; *First National Bank* v. *San Francisco*, 129 Cal. 96; and *San Francisco* v. *Crocker-Woolworth National Bank*, 92 Fed. 273. In each of these cases it was assumed that the bank fixtures were personal property and the Court merely held that R.S. 5219 precluded the taxation of personal property. In the latter California case of *San Diego Trust & Savings Bank* v. *County of San Diego*, 16 Cal. 2d 142; 105 Pac. 2d 94; 133 A. L. R. 416, the earlier cases were

distinguished on that ground and it was held that bank vault doors were improvements to land. One of the plaintiffs, a National bank, sought certiorari upon the ground that R.S. 5219 precluded taxation of the "fixtures." The writ was denied.[3] The California court has reaffirmed the rule in a decision not yet reported.[4]

C. THE LANGUAGE OF THE 1940 ACT IS OF NO SIGNIFICANCE

Emphasis is also placed upon the language of the 1940 act which authorized the organization of the Defense Plant Corporation. The statute (54 Stat. 573 (15 U.S.C. 606), authorized the corporation to do several things (1) to "purchase" land, plants, and equipment, supplies, and machinery, (2) to "lease" land or plant; (3) to "build" or "expand" plants and (4) to "produce" equipment, supplies, and machinery. When the statute was enacted there was an acute shortage of machine tools and the corporation was authorized to buy such tools or to produce new ones. It was also authorized to buy, lease, or expand existing plants. If the corporation bought or leased a "plant" it would acquire land, buildings, machinery, and equipment. An industrial plant is a working organism, not land and empty buildings to which machines are to be added. When machines are installed in a "plant" they become part of it and until the machines are installed the structure is not a

[3] (*United States National Bank of San Diego et al. v. County of San Diego*, 312 U. S. 679.)

[4] (*Trahue Pittman Co. v. County of Los Angeles*, ___ Adv. Cal. ___, decided April 9, 1946.)

"plant." It is nothing but an empty building. When the Government buys a plant, it buys the machinery in it as well as the buildings. When it condemns an industrial plant it pays for the machinery as well as the buildings for it must take the entire plant.[5]

Authority to construct an industrial plant would include the power to install the necessary machinery therein. The grant of the supplementary power to purchase machinery does not indicate that Congress so misconceived the state of affairs as to believe that production machinery does not become a part of an industrial plant.

D. THE CHANGES IN THE WORDING OF THE 1941 AMENDMENT

It is also urged that the elimination of the words "or structures" from the House amendment to the bill amending Section 10 of the R. F. C. Act is significant. Actually the amendment as a whole demonstrates a conviction upon the part of Congress that local definitions of real property were controlling. Congress believed that because under some circumstances the law of Michigan treated buildings as personalty for purposes of taxation, it could not tax buildings even though at common law buildings on leased land were usually regarded as real property. With the exception of this single amendment, Congress preferred that local definitions should control. It must have known that in some States machinery and equipment were treated as personal property for purposes of taxation. Yet it did nothing about either

[5] *United States* v. *Bechtold Co.*, 129 Fed. 2d 473.

situation. It preferred that as to these things local law should prevail. It neither declared that "structures" should be real property nor did it declare that they should be personal property. It provided no definition.

E. THE UNIVERSAL LEGAL DEFINITION OF REAL PROPERTY

Furthermore, Congress must have been familiar with the ordinary legal definition of the term "real property." At common law "real property" includes the land and things which are affixed to the land. Every State in the Union recognizes that improvements to land are real property and almost all apply the same tests in determining whether or not "fixtures" have become a part of the land. The three tests applied are the following:

1. Actual or constructive annexation of the article in question to the freehold.
2. Appropriation or adaptation to the use or purpose of that part of the freehold with which it is connected.
3. The intention of the party making the annexation to make the article a permanent affixation to the freehold.

The difficulty arises only in applying these tests. Varying results are obtained in many of the States, and it can not be said that the three tests are applied with any degree of uniformity. In *Thomson* v. *Callon*, 196 Wis. 581; 219 N. W. 439, 446, the Court said:

> "Questions of what fixtures pass as real estate arise principally in the following situations: (1) Between vendor and vendee; (2) mortgagor and

mortgagee; (3) landlord and tenant; (4) owner of life estate and remainderman; (5) seller under a conditional sales contract as against mortgagee and subsequent vendees and prior mortgagees; (6) with reference to taxation. Generally speaking, the rule is very liberal with respect to the rights or mortgagees and vendees. A much stricter rule is applied as against a landlord in a contest between landlord and tenant. It is probably that no branch of the law is in greater confusion than the law of fixtures. Confusion is due in some degree at least to a failure to classify the cases. There is a constant tendency to carry over decisions in one classification and to apply them to cases in other classifications, ignoring the difference in the legal relation of the parties."

In the light of the confusion of which the Court speaks it is doubtful that Congress intended that all questions as to the classification of property belonging to National banks and the R. F. C. should be settled for tax purposes by this Court. If Congress had intended that a uniform definition should be applied, it would have adopted such a definition. It would not have used words of such uncertain meaning without definition.

On the other hand, Congress knew that the States applied generally similar rules in reaching a conclusion as to what was an improvement to land and it is hardly conceivable that they thought that the word "improvement" and the word "building" were synonymous.

F. UNIFORMITY THROUGHOUT THE NATION WOULD BE IMPOSSIBLE TO ATTAIN

Congress subjected the corporation to local property taxes with all of their differences and expressly indicated a desire for uniformity within each of the States by declaring that the corporation's property should be taxed "as other real property [in that State] is taxed." It knew that no two States agreed precisely upon the law of fixtures and it intended only to limit the States to the taxation of land and improvements to land, leaving to each State the right to determine what was affixed to land. It is only in this way that uniformity within each State could be attained.

If Congress had believed that it was necessary that the property of the Defense Plant Corporation be taxed in the same way in each State, it would not have subjected the corporation to the varying tax systems of the several States. California, for example, levies no state-wide tax on property, but the cities and counties of the State are supported principally by taxes upon real and personal property. The California schools are supported partly by taxes on property and partly by State funds derived from other taxes. In some States the property tax is used for the support of the State Government as well as for the support of local government; in other States the schools are supported entirely by the property tax and in still other States they are supported entirely by other taxes. There are variations in tax rates, in

methods of assessment, and in exemptions granted to types of property and to persons.

If the Curtis-Wright Plant were located in another Pennsylvania County, it would probably bear a different burden of taxation for the tax rate would probably be different. If it were located in a different State, it would bear a still different burden. It is even conceivable that a State which exempts machinery from taxation might exact more taxes than those which were imposed by Beaver County on the plant, including the machinery. The rates in Pennsylvania may have been low and those in neighboring Ohio, high. Congress knew that uniformity in the taxation of real property belonging to the R. F. C. and its subsidiaries was impossible. The variations in the definition of the term "real property" are only one of many factors in the fluctuations in the burden of property tax.

If Congress had desired, it could have provided for a greater degree of nation-wide uniformity by providing for payments in lieu of taxes. The R. F. C. Act was amended to provide for the taxation of property belonging to the Defense Plant Corporation on June 10, 1941. Eighteen days later the Lanham Act (42 U.S.C. 1546) was amended. That act provides for the payment of sums in lieu of taxes to the local taxing districts in which Federal housing projects are located. Under that statute the Government could effect substantial uniformity in payments to local governments. Housing projects at least, are not sub-

ject to the varying methods of assessing property. In enacting the Lanham Act, Congress did have an eye toward uniformity; but it gave no thought to uniformity when it amended the R. F. C. Act.

The Congress necessarily knew that the tax laws of Massachusetts were different from those of California and that both of these were different from the law of Louisiana. The date of the tax lien, the assessing and equalizing officer or body, the method of determining the tax rate, the method of collecting the tax, the procedure for procuring a refund are all different and Congress knew it. In Pennsylvania, Appellant followed Pennsylvania procedure for contesting the legality of the taxes assessed against it by appealing to the Beaver County Court. In California it paid the taxes under protest and filed suits for refund in accordance with California procedure. In fact, Appellant accepts these State tax laws of Pennsylvania and California as controlling in every feature and aspect except in the definition of "real property."

Everything in the language of the statute and its history points to the conclusion that Congress was concerned primarily with uniformity within States. Section 10 of the R. F. C. Act, like Section 5219 of the Revised Statutes, was enacted to prevent discrimination within States not to require each State to treat the Federal corporations alike.

G. THE LANGUAGE OF SECTION 10 ITSELF SHOWS AN INTENT THAT LOCAL LAW SHOULD CONTROL

Congress declared that the property of the Defense Plant Corporation should be "subject to" the tax laws of the several States. It expressly subjected the corporation to 48 different laws. When it declared that the real property of this agency of the Government should be subject to the tax laws of the 48 States, it must necessarily have intended that it should be subject to the definitions contained in those tax laws. To be entirely subject to the laws of the 48 States, it is essential that the corporation be subject to the definitions contained in the law.

Further evidence is contained within the language of Section 10 which discloses the intent of Congress that the definition of the term "real property" should be controlled by State law. The expression "real property" is used twice in the statute. The statute provides that "the real property of the corporation" shall be subject to local taxation to the same extent as "other real property" is taxed. The "other real property" thus referred to is obviously all real property within each State owned by persons other than the R. F. C. and its subsidiaries. Congress did not intend to rewrite the tax laws of each of the States. When it referred to other real property, it meant real property as that term is defined by each of the 48 States.

The statement that the "power to tax involves the power to destroy" found its origin in a governmental immunity case. It was with this in mind that Congress provided that this agency of the Federal Gov-

ernment should be taxed on to the same extent and in the same manner as other taxpayers are taxed upon their real property. The object and purpose of the enactment was not to require that the property of the R. F. C. and its subsidiaries be taxed differently from the property of other persons in each State. Rather the statute was designed to prevent taxation discriminating against this agency. Uniformity within each State was the goal.

H. THE PURPOSE OF THE WAIVER

The Government urges that the purpose of the waiver of immunity was to prevent the diminution of the revenues of local taxing districts and that to permit the States to tax machinery and equipment permits them "to gain by the war necessities of the Nation."

If a city in which an industrial plant were located provided water or electric light and power to Appellant, Appellant would expect to pay for the services. It would hardly accuse that city of profiting by the "war necessities of the Nation" merely because it was paid for the services rendered by its utilities department.

Ordinarily the owner of an industrial plant pays part of the cost of providing police and fire protection for his plant and his workers. He also pays for providing sanitary facilities, recreation facilities, schools and hospitals. He usually pays for those services by paying property taxes and these taxes are

ordinarily measured by the value of his land, his buildings, and his machinery, appraised as a unit.

This is not the appropriate forum to argue the question of whether the United States should assume the same burdens as another owner of an industrial plant. It is appropriate, however, to point out that Congress concluded in this case that it was desirable for the Defense Plant Corporation to make a contribution to the cost of local government by the payment of taxes. This was a matter of policy which Congress decided.

When a building is constructed in a taxing district for use as a warehouse, it draws a few people into the community and perhaps leads to only an insignificant increase in the cost of government. But when machinery and equipment are installed in a building and it becomes an industrial plant instead of a warehouse, hundreds or sometimes thousands are attracted to the community and the cost of government increases rapidly.

Substantially every local community in which Federally-owned war projects were erected was immediately forced to expand its activities. The influx of war workers required additional fire, police, and health protection. It required expansion of school and hospital facilities and an increase in all other governmental functions. In some cases in which the Government itself owned shipyards and similar facilities which were entirely exempt from taxation it was necessary for the Government to finance the construc-

tion of sewers, the building of hospitals and schools, and even to contribute to the maintenance of the local police departments. (See *Fortune*, Feb. 1945, p. 262, Richmond Took a Beating.)

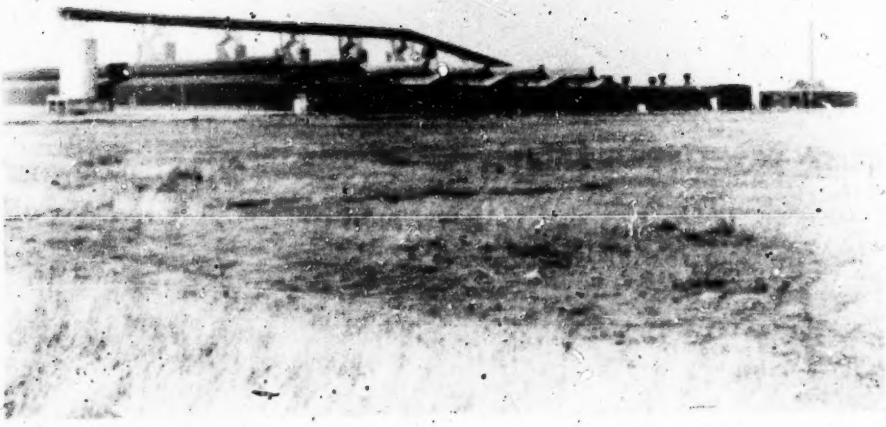
If a purpose may be assigned to the waiver of tax immunity it must be evident that the purpose was to require Appellant to assume its normal share of the burden of supporting local government. If Congress had debated the problem, we submit that it would have required Appellant to pay greater taxes on an industrial plant than it might pay on an empty building.

The Appellant also suggests that in the absence of a uniform tax day, machinery might be so moved about that it might be taxed in several jurisdictions. Appellant does not suggest that this has happened and indeed it would be surprising if that result did occur while Appellant retained the power to determine in which jurisdiction its property would remain. There would seem to be a greater prospect that Appellant would avoid taxes altogether on some of its property by reason of differences in the tax day.

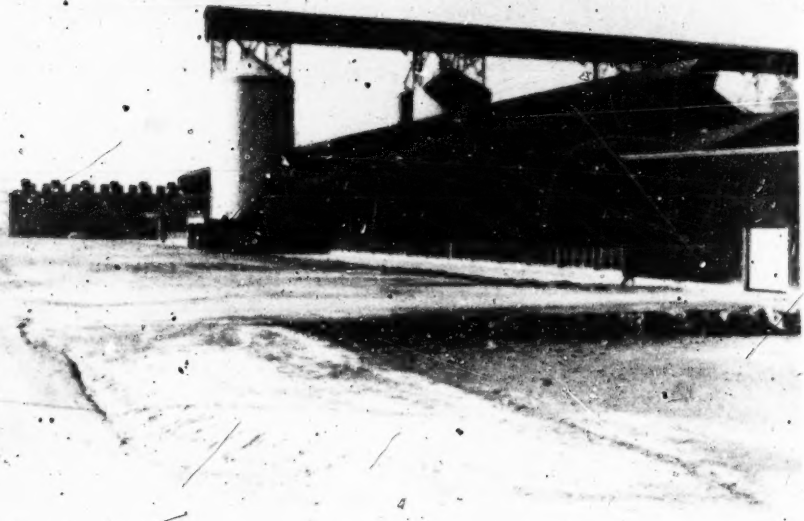
This problem would be present in the case of stocks of materials and supplies which were in fact moved about the country but Congress hardly anticipated that there would be a substantial movement of machinery which had been placed in use.

I. "REAL PROPERTY" INCLUDES ALL FIXTURES

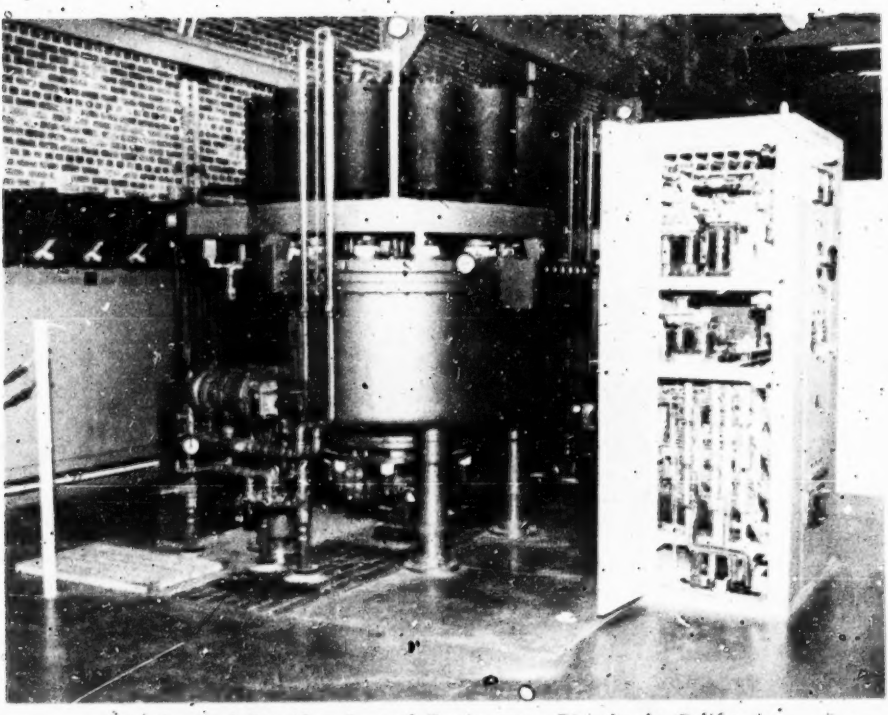
Appellant makes an attempt to show that the words "real property" in the "normal sense" includes only



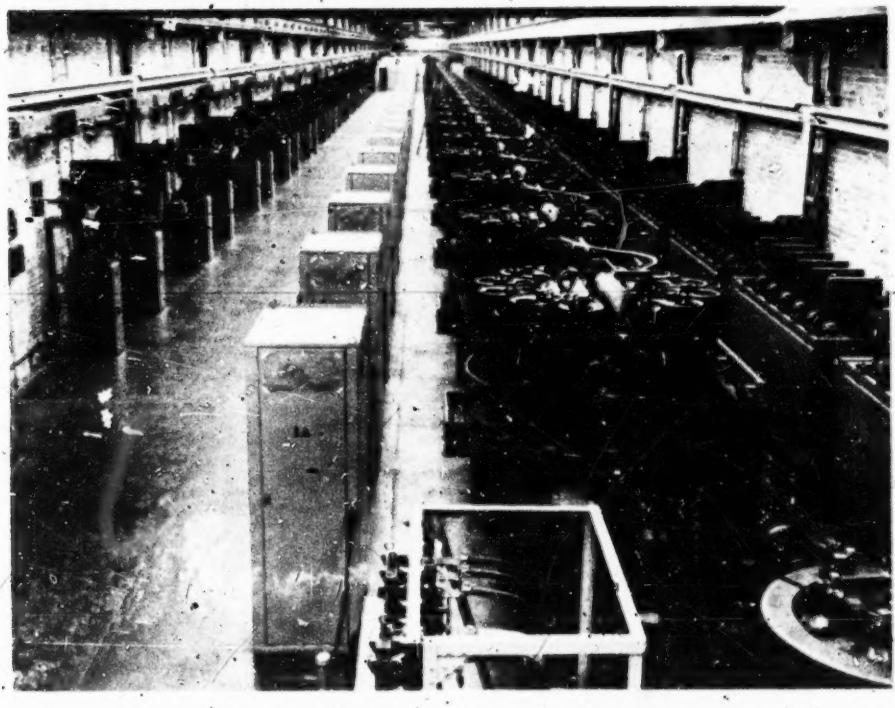
Aluminum Plant—Riverbank, California



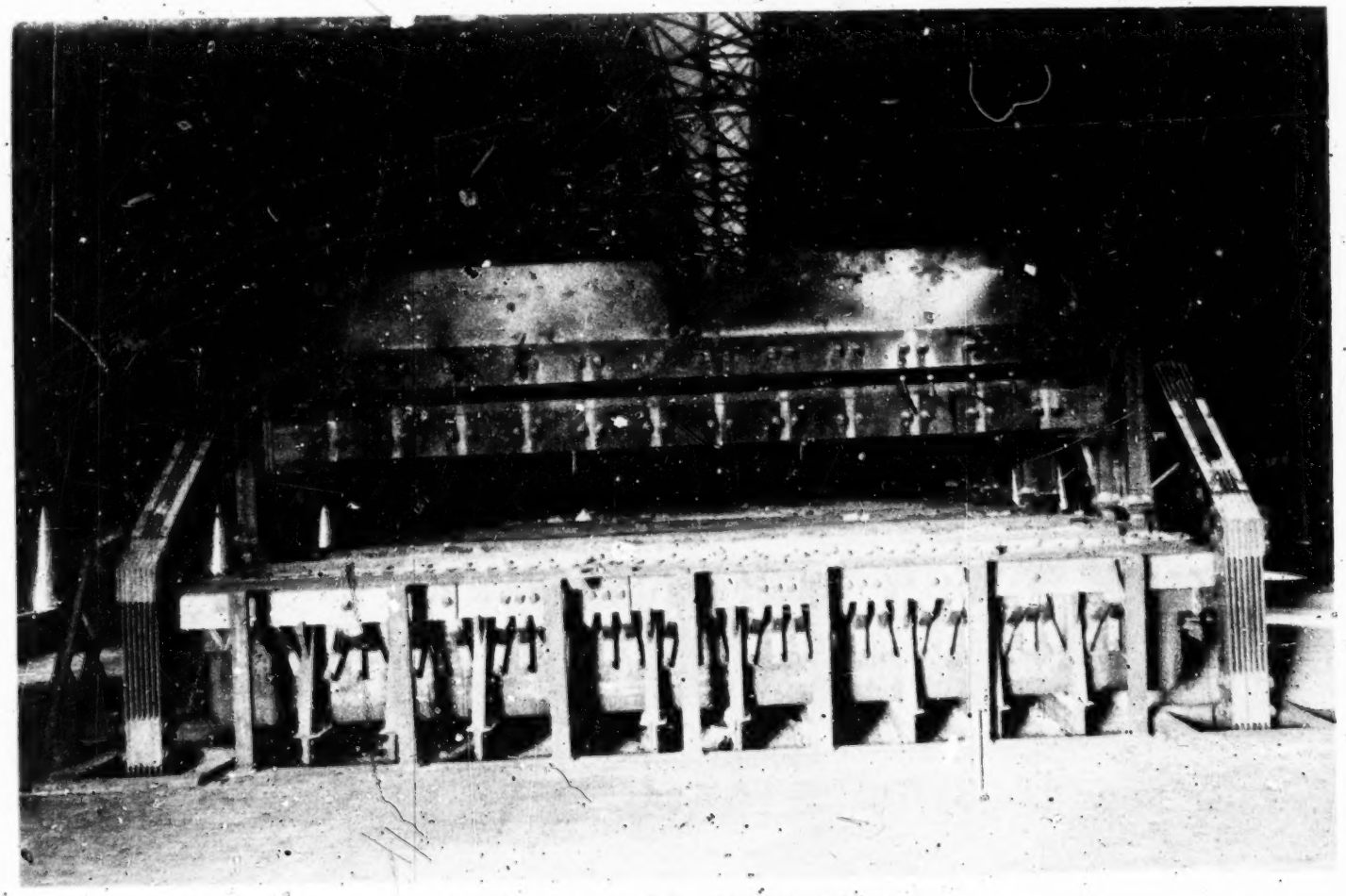
Ore Bin—Riverbank, California



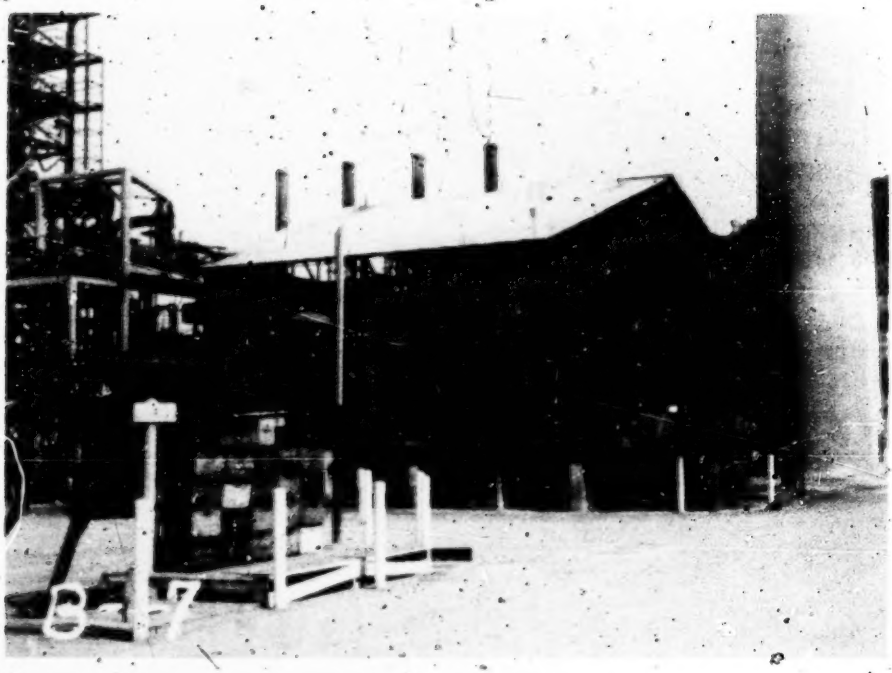
Rectifier and Rectifier Control Equipment—Riverbank, California



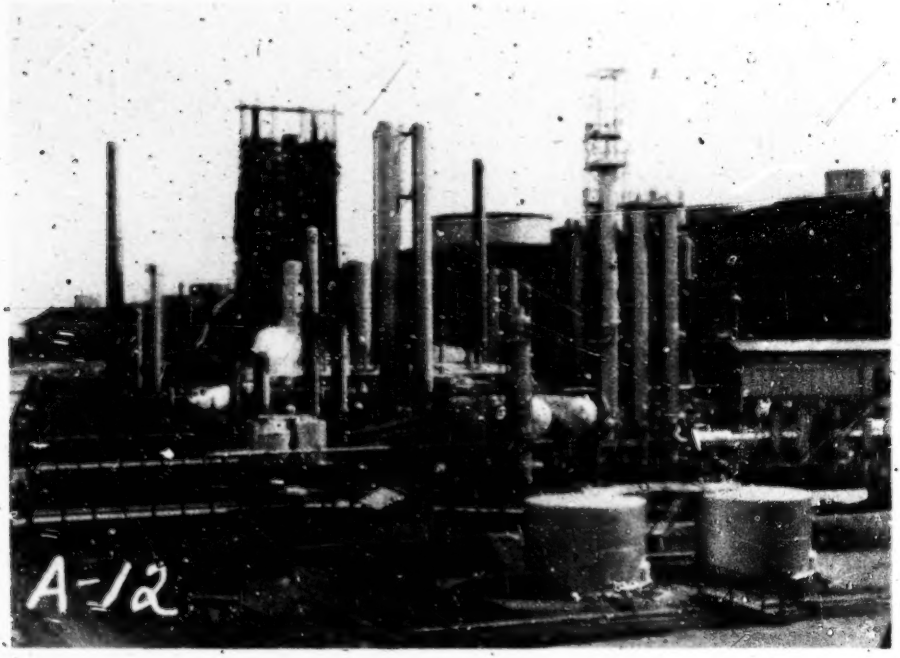
Circuit Breakers, Rectifier and Rectifier Control Equipment—
Riverbank, California



Aluminum Reduction Pots—Riverbank, California



Refinery Equipment—Richmond, California



Gasoline Refinery—Richmond, California

land and buildings. It further suggests that at common law a distinction was made between buildings and other improvements to real property.

It is perhaps true that prior to the industrial revolution some legal commentators defined "real property" as land and buildings. However, after man learned to construct structures upon land other than buildings this definition was abandoned and "real property" is now almost uniformly defined as including land and things affixed to the land. There is no basis in any of the modern decisions for the idea that a structure is an improvement to realty merely because it has four walls and a roof and that nothing else can become a part of the land.

Many structures erected on land today are far more massive than the ordinary building erected in Blackstone's day. Indeed Blackstone would no doubt have regarded Appellant's "movable" machinery as immovable. Without modern jacks, cranes, trucks, and railroads the lathes and grinders which Appellant states were moved from plant to plant would have been, in fact, immovable.

Opposite page 22 are two photographs of Appellant's Riverbank (California) aluminum plant. The cylindrical structures shown therein are bins in which the ore (in the form of a powder) was stored. The bins are bolted to concrete foundations and in Appellant's eyes may be removed without damage to the freehold. In spite of the fact that these bins tower above the buildings and in spite of the fact that they

support the conveyor belt housing (the structure on top of the tanks which is conceded to be real property) Appellant has insisted in the California courts that the bins are personal property.

Appellant, we submit, has thus reduced its own argument to an absurdity.

ii. The Common Law Meaning of the Words "Real Property"

Much of the discussion with regard to fixtures is unnecessarily complicated by the unnecessary use of words of uncertain meaning. Actually the terms "real property" and "personal property" describe the interests which individuals have in property. Congress, the State legislatures, and the courts generally have also used the term "real property" to describe land and improvements to land and the term "personal property" to describe chattels.

Chattels may be annexed to the land in such a way that they become part of the land, or improvements to land. A brick which is incorporated into a wall loses its identity as a brick altogether and becomes nothing but a part of a wall. On the other hand, an ordinary chair placed in a house retains its identity as a chair and does not become a part of the house. But lathes, grinders, presses, and drills, placed in a factory retain their identity as chattels, in a sense, because they are large and identifiable although they also become integral parts of the factory and therefore parts of the land.

When a tenant attaches machinery to his landlord's land, he can reserve the right to remove it by agreement. His rights to remove the property depends primarily upon the "intent of the parties." But if a dispute arises between a landowner and the sovereign in a condemnation suit, the intent of the landowner or the owner of the machinery is immaterial. If, from an examination of the premises, it appears that machines or other chattels have been so identified with the land as to be a part of it (or an improvement to it) the sovereign must take the annexed chattel and compensate the owner therefor as a part of the land. The intent of the owner is not controlling or material except as such intent is presumed as a matter of law from his actions.[6]

When the taxpayer deals with the sovereign, as represented by the local assessor, the same rule must be applied. If taxpayers are to be treated alike, their property must be treated alike without consideration of their actual state of mind or of their expressions of intent. A chattel so identified with the land as to appear to be a "fixture" must be taxed as "real property" even if its owner has reserved the right to remove it.

In most of the decided cases involving controversies as to the character of property as "real" or "personal," the dispute has had its genesis in rival claims of right in the disputed property, as between landlord and tenant, vendor and vendee, mortgagor and

[6] Compare *United States* v. *Bechtold Co.*, 129 Fed. 2d 473; *Jackson* v. *State*, 213 N. Y. 34; 106 N.E. 758.

mortgagee, mechanics lienor and conditional vendor and combinations of such relationships.

As between private claimants as to interests in the property the law seeks to enforce that result which appears to be most reasonable in the light of the individual case. Where possible, private agreements as to the character of the property are upheld. In those cases the intention of the parties prevails. But where such a result would work an injustice to third persons, the parties are frequently required to stand upon the inferences which their conduct has reasonably induced others to act upon. (See Bingham: Some Suggestions Concerning the Law of Fixtures; 7 Columbia Law Review 1.)

The Appellant is the sole and complete owner of the machinery and equipment involved in this case. The only issue is how the assessor shall regard it for purposes of taxation. The authorities unanimously support the proposition that assessing officers are entitled to rely exclusively upon the statutory guides and the physically perceivable facts in classifying annexed property as improvements or personal property.[7]

In *Bemis* v. *Shipe, supra,* the assessors assessed as improvements, a stationary saw mill. There was an

[7] *City of Pasadena* v. *County of Los Angeles* (1920), 182 Cal. 171, 187 Pac. 418; *Comstock* v. *Town of Waterford* (1911), 85 Conn. 6, 81 Atl. 1059; *Bemis* v. *Shipe* (1904), 26 Pa. Super. Ct. 42; *Pennsylvania Stave Co.'s Appeal* (1912), 236 Pa. 97, 84 Atl. 761; *County of Franklin* v. *McClean* (1927), 93 Pa. Super. Ct. 165; *People* v. *Wells* (1909), 135 App. Div. 644, 119 N. Y. Supp. 1057; *Guthrie* v. *Pittsburgh Dry Goods Co.* (1911), 47 Pa. Super. Ct. 384; Cooley, "Taxation," 4th Ed. Vol. 3, p. 2130. *Trabue Pittman Co.* v. *County of Los Angeles,* ___Adv. Cal. ___, decided April 9, 1946.

agreement between the owner of the mill and the owner of the land permitting the mill owner to remove any buildings erected. It was contended that this agreement gave the mill the character of personal property for tax purposes. The Court remarked (pp. 45-46):

> "The entire argument of the appellants is based upon the premise that because, as between the owners of the land and the owners of the mill, the latter can be called personal property, it is therefore personal property for all purposes, * * *.
>
> "It may be admitted that, as between the owners of the land and the owners of the mill, the latter may be regarded and treated by them as personal property, and yet it by no means follows that in contemplation of the law for other purposes it is not real estate * * *.
>
> "Under section 1, article nine of the Constitution, it is provided that 'all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax'. This uniformity means equality of the burdens of taxation among the taxpayers of any municipality. It can scarcely be conceived that the legislature, even without such a constitutional provision, should intend to exempt from taxation a building upon one tract of land, because it happened to be erected upon a leasehold, *under a concession of the right to remove* it at the termination of the lease, and impose a tax upon a precisely similar building on an adjoining tract, because it was erected by the owner, and yet, if

the contention of the appellants is correct, that would be the inevitable result.

"If this be true of a sawmill, it would be true also of any other improvements of a permanent character, * * * and this carried to its logical conclusion, might remove any portion of the taxable real estate of any municipality from the grasp of the law for the purposes of taxation by a single agreement between the lessors and lessees that, as between them the lessees should be permitted to remove them at the expiration of the lease." (Emphasis added.)

The reason for this rule is obvious. Assessors may not be frustrated or hindered in performing their vital public function by the necessity of ferreting out the inchoate, undisclosed and often secret intentions of property owners as to its status. Cases involving the rights of innocent third persons, are therefore of the greatest assistance in ascertaining the law of fixtures for taxation purposes.

If Appellant were correct, the R. F. C. could determine the character of property belonging to it for purposes of taxation by any declaration in a lease that its machinery and equipment should be treated as personal property. Presumably Appellant would argue that the assessor would be bound by a similar declaration that its factory buildings were personal property, or a declaration that growing timber was personal property, or a declaration that minerals in place were personalty. If Congress had intended that R. F. C. and its subsidiaries were to

be free to determine the nature of their property for tax purposes, it could have simply authorized the State to tax so much of the corporation's property as the corporation desired. Congress did not confer this discretion upon the R. F. C.

An examination of the Appellant's Brief will disclose that while it advances the argument that Congress intended to permit the States to tax only land and buildings, it does not contend seriously that at common law the term "real property" included only land and buildings.

The Appellant recognizes that anything annexed to land which is adapted to the use of the property and which is annexed with the intention that it be a permanent accession to the freehold is a fixture and is a part of the land. The Appellant recognizes, too, that the first factor, the mode of annexation, is now of little importance. If a machine is so annexed to a building that it can not be removed without seriously damaging the building, all courts agree that the manner of annexation is strong evidence of an intent to make a permanent annexation. But the converse of this proposition is not true. Only a few States (New York, Vermont, and Arkansas) consider the fact that a machine may be removed without injury to the freehold as any evidence that there was no intention to annex it. In the eyes of almost all of the State courts the fact that a machine may be removed without damaging the property on which it rests is immaterial.

With respect to machinery the majority of the State courts place the greatest emphasis upon the adaptation of the machine to the use of the property with which it is connected. Adaptation to use is regarded as the strongest evidence of the intent to annex machines to property. While, as between parties to a contract, expressions of intent will control, the rights of third parties in connection with machinery are ordinarily determined upon the basis of whether or not the machine constitutes part of the plant.

In *Planters Mfg. Co.* v. *Greenwood Agency Co.*, 168 Miss. 892; 152 So. 476, 477, the Supreme Court of Mississippi held that an electric motor installed in place of an engine and boiler was part of the realty. The Court said:

> "The motor was not only thereafter used for the operation of the gins, but was installed in such manner as to make it a permanent part of the plant. *It could have been removed, as was the engine and boiler, without damage to the other machinery, but such is the case usually with the various component parts of any manufacturing establishment.* This motor, therefore, became part and parcel of the gin plant and was covered by the deed of trust thereon, and it is clear from the evidence that instead of impairing, it enhanced the value of the plant as a security for the debt secured by the deed of trust." (Italics added.)

In *Cunningham* v. *Curcton*, 96 Ga. 489, 23 S.E. 420, 421, the Court said:

"Our Code declares that 'realty or real estate includes all lands and the buildings thereon, and all things permanently attached to either.' 'Anything intended to remain permanently in its place, though not actually attached to the land, such as a rail fence, is a part of the realty and passes with it. Machinery not actually attached, but movable at pleasure, is not a part of the realty.' Sections 2218, 2219. As we have seen, the machinery in question was attached to the mill, and, as appeared from the plaintiff in evidence, was put there to remain permanently in its place, as a part of the mill. A portion of it consisted of shafting and belting used in the transmission of the motive power to the rest of the machinery; and the planer and the molder were heavy machines, held in place by bolts, and not intended to be moved about from place to place, but intended to be used permanently with the building. *Although it might have been removed without physical injury to itself or to the building, the machinery was of a kind essential to the completeness of the mill, for the purposes for which it was built and was being operated. It could not properly be regarded, therefore, as machinery 'movable at pleasure', in the sense intended by the Code.* If this language were interpreted in a literal sense, it would apply to almost every kind of machinery, and clearly such is not the intention of the law." (Italics added.)

The New Jersey Court reached the same result in *State of New Jersey* v. *Cruse*, 83 N. J. Eq. 232; 90

Atl. 673, 674, where it was held that machinery was part of a factory and as such was part of the realty. The Court said:

> "The building in which the machinery and appliances were contained was used by Cruse, and mortgagor, as an engineering and machinery shop and factory for the machinery and fabrication of iron and steel materials and construction work. The articles in question were installed by the mortgagor and were fitted for and intended to be, and were, used by him in the carrying on of that business on the mortgaged premises, and for that purpose were affixed to the ground and building. *They were removable without injury to the real estate, but this circumstance is of little moment. They were integral parts of a common plant, and with the building formed a unit for the prosecution of a common purpose.* Undoubtedly they were intended by the mortgagor to remain indefinitely, and were designed by him to be, not a temporary, but a permanent, accession to the freehold. Speiden, Receiver, v. Parker, 46 N. J. Eq. (1 Dick.) 292, 19 Atl. 21; Feder v. Van Winkle, 53 N. J. Eq. (8 Dick.) 370, 33 Atl. 399, 51 Am. St. Rep. 628; Knickerbocker Trust Co. v. Penn Cordage Co., 66 N. J. Eq. (21 Dick.) 305, 58 Atl. 409, 105 Am. St. Rep. 640; Prudential Ins. Co. v. Guild, 64 Atl. 694." (Italics added.)

In *State* ex rel *Gisholt Machine Co.* v. *Norseman*, 168 Wis. 442, 169 N.W. 429, a tax case, the Court held that machinery adapted to the purposes of a manufacturing plant and connected to the building only by

wires and belts was part of the realty. The Court said:

"The effect of these decisions is that *when machinery adapted to the purposes of a manufacturing plant is installed therein and connected with the building by wires or belts, such machinery becomes a part of the freehold, and the land, buildings, and machinery so attached constitute an entity* and pass by deed, mortgage, or other conveyance of the land. This doctrine is so firmly written into the decisions of this court as to have become a rule of property in this state which it is our duty to respect and protect. * * *

"It is true that the question of whether property constitutes fixtures is largely one of intent. But *where property is adapted to the use to which the realty is devoted, the use thereof in such manner furnishes such strong evidence of intent to make it a part of the freehold as not to be overcome by bookkeeping practices.*" (Italics added.)

The same view was expressed by the Indiana court in *White* v. *Cincinnati, R. & M. R. R.*, 34 Ind. App. 287, 71 N.E. 276, 279. That case was a condemnation case. The Court applied the doctrine that the land, buildings and machinery (whether fast or loose) constituted a unit for use together. The Court said:

"The case at bar seems to have been tried upon the theory that a part of this machinery should be considered as part of the land, while a part of the machinery might not be so considered. It is clear from the record that the improvement upon the real estate consists not simply of certain buildings containing various pieces of machinery, but

of a paper mill—a thing complete within itself. Such machinery as is necessary and essential to a paper mill plant would be without value except as a part of a paper mill. Means were provided for utilizing the water power, buildings erected, and the machinery placed in position for the purpose of establishing a paper mill. It is not questioned that the buildings should be regarded as a part of the land. In such case there is no more reason for saying that the machinery necessary and essential for carrying out the purpose of the mill is a mere incident or accessory to the buildings than there is for saying that the buildings are incidents or accessories to the machinery. One machine essential in the manufacture of paper might be so annexed to or constitute such part of a building that it could not be removed; and another machine equally essential might be easily removed, and yet, when the two machines are separated, each is without value for the uses intended. In such case both of the machines should be considered as attached to the freehold—one by real and the other by constructive annexation. *As the machinery is permanent in its character, and, being essential to the purpose for which the buildings are used, is a fixture, it must be regarded as realty, and goes with the buildings. The land, water power, buildings, and machinery constitute a paper mill plant —a unit.* It has or has not a value as such, just as a building is valued, not by fixing a value on the different materials composing it, but as a building." (Italics added.)

In *Danville Holding Corporation* v. *Clement*, 178 Va. 223, 16 S.E. 2d 345, 350, 351, the Virginia Court

expressed the view that the intent of the annexor was to be ascertained primarily from the use to which the building and the machines were put, saying:

> "The character of a fixture is determined by the law of fixtures; that is, from *the external indications* which show whether or not it belongs to the buildings as an article designed to become part of it, and to be used with it, to promote the object for which it has been erected, or to which it has been adapted and devoted * * *. We are not unmindful that there are earlier cases which hold that where machinery has been installed in a building and may be removed without injury to the building, it retains its characteristic of personality; but it will be found in most of these cases that either the installation was only temporary, machinery not essential to the purpose for which the structure was devoted, or local policy controlled. (Italics added.)

The Nebraska Court has also rejected the idea that evidence of damage to the realty is necessary to show annexation and has held that adaptation of machinery to the use for which the property is devoted shows an intent to annex the machine to the property. In *Frost* v. *Shinkel*, 121 Nebr. 784; 238 N.W. 659, 671, the Court said:

> "Modern decisions in both England and America are against the old common-law doctrine that the mode of annexation is the criterion as to whether slight and temporary or immovable and permanent, and there is a tendency in favor of declaring things to be fixtures which are attached to the

realty with a view to the purposes for which it is held or employed. *First Nat. Bank* v. *Clifton Armory Co.*, 14 Ariz. 360, 128 Pac. 810, Ann. Cas. 1915A, 1061; 11 R.C.L. 1059.

"It should be a safe rule to say that *parts of property which are not physically attached to realty, but which are absolutely necessary to the operation of machinery and equipment which is physically attached, become themselves governed by the same rules as that which is annexed to the freehold.* And this court finds that this 1,400-pound lathe, placed therein by the owner before giving the real estate mortgage thereon, is a part of the realty belonging to the plaintiff." (Italics added.)

The Illinois Court, although using somewhat different language, also has come to the conclusion that it is immaterial that machines may be removed without injury to a building and that machinery which is a constituent part of a factory or shop and indispensable thereto is a fixture although not actually fastened. In *Kenny* v. *Artz Foundry Co.*, 308 Ill. App. 251; 31 N.E. 2d 620, the Court held that traveling cranes and other machinery and equipment were part of the real estate.

In a case involving equipment installed in an apartment house the Oklahoma Court has expressed its approval of the Pennsylvania rule saying:

"Also cited in the Bathgate Case (15 Okl. 87, 79 Pac. 903, 908), supra, is the case of Ege v. Kille, 84 Pa. 333, 340, in which the court said: 'The criterion of a fixture depends on the business for

which the premises are used. A fixture in a manufactory, mill, or colliery may have no adaptation to many other kinds of business. Although not attached, yet, if it be designated for the convenience of trade on the premises, and be so used, or subject to be called into use at any time, it becomes a fixture. If the article is indispensable in carrying on the specific business, it becomes a part of the realty. Voorhis v. Freeman, 2 Watts & S. 116, 37 Am. Dec. 490; Pyle v. Pennock, 2 Watts & S. 390, 37 Am. Dec. 517.'

"*Like the Pennsylvania court when it concluded in the first of the above-quoted opinions that a railroad machine shop would be incomplete, if not useless, without lathes, we here conclude that an efficiency apartment as generally constructed is incomplete if not useless with efficiency equipment* somewhat similar to the folding beds and kitchen units in question. A general hint of this fact is contained in the defendant's own testimony to the effect that even when he rented some of the partments 'unfurnished' these items were not removed. As we believe that such equipment is practically indispensable in carrying on the business and purpose of an efficiency apartment building like the defendants', we must hold that the equipment involved here became a part of the realty when installed in said building." (Italics added.)

This same conclusion has been reached in California where it has been held that presses, linotype machines, and other equipment necessary to the operation of a printing plant are part of the realty,[5] and that the equipment of a central office of a telephone com-

[5] (*City of Los Angeles* v. *Klinker*, 219 Cal. 198; 25 Pac. 2d. 826.)

pany included the portable stools used by the operators and the plugs used in making connections were part of the real estate."

International Trust Company v. *Palisade Light, Heat, and Power Company*, 60 Colo. 397; 153 Pac. 1002, was an action to foreclose a deed of trust. The Court held that the machinery involved was part of the real estate including some removable items and quoted with approval from the decision in the case of *Gibson* v. *McNichols*, 51 Colo. 54; 116 Pac. 1014 as follows:

> "When a building is erected for a particular purpose, and machinery placed therein reasonably necessary to effectuate that purpose, and in some substantial manner attached to such building, it becomes part of the realty."

The Montana Court in *Story* v. *Goldridge and Co.*, 106 Mont. 166; 76 Pac. 2d 73, held that a dredge was real property. In the course of its opinion it quoted with approval from its decision in *Shikler* v. *Potomac Copper Co.*, 69 Mont. 86; 220 Pac. 1097, 1100, where the Court said:

> "The intention mentioned in all authorities is not the secret intention of the person making the annexation but the intention dedicible as a presumption of law from the character of the chattel, the manner and effect of its annexation, its adaptability to the use of the realty, the purpose to which it is put, the relation of the parties, and the policy of the law."

(Southern California Telephone Company v. State Board of Equalization, 13 Cal. 2d. 127, 132; 82 P. 2d 442.)

The Michigan Court has expressed its approval of the Pennsylvania rule in a case involving the classification of an ice manufacturing plant. The Court said:

> "The ammonia compressors, aerating equipment, boilers, motors and refrigeration units, freezing tanks, air compressors, condensors, engines, oil tanks, and pumps, platform scales, scorching machines, and other machinery for manufacturing ice are fixtures * * *. We believe that this should also include spare motors, parts, machinery, equipment, etc. which constitute replacements specially adapted to the full enjoyment of the realty. See *Voorhis* v. *Freeman*, 2 Watts & S. (Pa.) 116, 37 Am. Dec. 490."
>
> *Detroit Trust Co.* v. *City Service Co.*, 262 Mich. 14, 247 N.W. 76, 81.

Other courts which have adopted the rule that the nature of annexation of machinery is immaterial where it is an integral part of the plant include Delaware,[10] Iowa [11] and Kansas, where the court said, "all things used in a factory which are a part of the machinery necessary in the process of manufacture are fixtures."[12]

Louisiana reaches the same result through the application of the civil law, the courts of that State having concluded that machinery installed in a manufacturing plant is "immovable by destination".[13]

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[10] *Eq. Guaranty Trust Co.* v. *Knowles*, 8 Del. Ch. 106, 67 Atl. 961.
[11] *McGorrisk* v. *Dwyer*, 78 Iowa 279; 43 N.W. 215.
[12] *Cook* v. *Condon*, 6 Kans. App. 574; 51 Pac. 587.
[13] *Straus* v. *City of New Orleans*, 166 La. 1035; 118 So. 125.

The Massachusetts case of *Hopewell Mills* v. *Taunton Savings Bank*, 150 Mass. 519, 23 N.E. 327, is frequently cited as a leading case for the proposition that machinery installed in a mill or manufacturing plant is, as against a mortgagee, a part of the plant and as such real property.

The Hopewell Mills case is followed in Maine.[14] Missouri follows the same rule.[15] The Oregon Court has indicated that the same rule would be applied.[16] And Alabama is in accord.[17]

In *Planters Bank* v. *Lummus Cotton Gin*, 132 S. C. 16; 128 S.E. 876, the South Carolina Court held that ginning machinery was part of the real estate. The Court held that the intention of the annexor was to be inferred from the nature of the article, the relation of the parties, the mode of annexation, and the purpose and use for which the annexation was made.

The Tennessee Court has held that machinery making up an ice plant was real property although it was merely bolted to the floor and was easily removable,[18] and in *Metropolitan Life Insurance Co.* v. *Jensen*, 9 N.W. 2d. 140, South Dakota Court followed the rule that machinery adapted to the use of a factory was a part of the realty in spite of the ease with which

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[14] *Gaunt* v. *Allen Lane Co.*, 128 Me. 141; 145 Atl. 255.
[15] *Globe Automatic Sprinkler Co.* v. *Boester*, 231 Mo. App. 202; 95 S. W. 2d. 285.
[16] *First State and Savings Bank* v. *Oliver*, 101 Ore. 42; 198 Pac. 920.
[17] *Southern Cotton Oil Co.* v. *Lowery*, 231 Ala. 119; 163 So. 629.
[18] *Union Bank and Trust Co.* v. *Fred W. Wolf & Co.*, 114 Tenn. 225; 86 S. W. 310.

it could be removed. The same result was reached in West Virginia.[19]

Opposed to this mass of authority are the cases decided by the courts of Ohio, Rhode Island and Vermont to the effect that production machinery remains a chattel although it is an integral part of an industrial plant. As a matter of fact, no State goes as far as does Ohio which, largely upon the basis of peculiar statutory provisions, has held that all production machinery is personal property for purposes of taxation.[20] New York holds that machinery installed in a building specially designed to receive it is an improvement to land and since much of the defense plant machinery is installed in specially designed buildings would treat it as taxable.[21]

Appellant's argument is that the intention of the parties controls. As between Curtis-Wright and Defense Plant the recitals in the lease are no doubt controlling. Private parties can as between themselves give property the attributes of real property or the attributes of personal property. But the vast majority of the State courts hold that parties to a contract can not determine the character of property as between themselves and third persons by mere agreements. Third persons, including tax assessors, are

[19] *Pocohontas Coal & Coke Co.* v. *By-Products Pocohontas Co.*, 112 W. Va. 390; 164 S. E. 504.

[20] *Zangerle* v. *Standard Oil Co.*, 144 Ohio St. 523; 60 N. E. 2d 59.

[21] See *In re Whitlock Ave.* in City of New York 278 N. Y. 276; 16 N. E. 2d 281; and compare Matter of *New York Telephone Co.*, 257 App. Div. 415, 13 N. Y. S. 2d 359; and see *Interstate Lien Corporation* v. *Schmidt*, 180 Misc. 910, 44 N. Y. S. 2d 709, holding trade fixtures to be taxable as real property.

entitled to rely upon appearances, upon the physical manifestations of intent rather than upon expressions of intent.

The installation of a machine in a factory and its use in the process of manufacturing is the strongest evidence of an intent to annex machines to the realty. We have shown that at least 30 States concur in this view and there are no doubt others who agree. In any event there are not more than half a dozen who have expressed any disagreement with the view.

The Pennsylvania Courts regard such evidence as almost conclusive evidence of an intent to annex the machine to the realty. The effect of the legislation in Pennsylvania has been merely to make installation in a factory conclusive evidence of that intent for purposes of taxation. While it may be true that the courts of no State have said that installation in a factory is conclusive evidence of intent to annex a machine, many have come close to it.

The Pennsylvania rule is one which is easily understood and one which can be easily and efficiently administered by local assessors and there are certainly few situations in which Pennsylvania would tax machinery and equipment as real property where the majority of States would not do likewise.

The record discloses (R. 45) that changes in design were responsible for most of the movements of the machinery in the Curtis-Wright Plant. As improvements were made in design, machines became obsolete and were moved out. The machines were not installed

with an idea that they would be moved until they did become obsolete.

It is a matter of common knowledge that changes in design require changes in machinery used in an automobile manufacturing plant. It is customary in that industry to group the changes so that a new model is placed on sale each year, but changes are made and machines are moved. Because in the manufacture of airplane propellers improvements in design were more frequent the machinery was moved more often. But there was no basic difference in the manner of installation, or in the intent of those installing the equipment. The difference was one of degree only.

We are not prepared to prophecy what results the courts of a majority of the States would reach if they were called upon to classify the machinery in the Curtis-Wright Plant. But it is relatively certain that almost all courts would hold that those machines which were bolted to concrete foundations were part of the land; that the overhead cranes were annexed and that the heavy machines held in place by gravity were annexed. Many would also hold that the electric trucks were constructively annexed.

There are no decisions which hold that the airplane industry is to be treated differently; that because of changes in design and movements of machinery in its plants its property is to be treated as personalty while similar machines installed in the same manner in similar plants used for manufacturing automobiles are real property.

Certainly there is no conceivable reason why Congress would have concluded that the line should be drawn between machines in airplane factories and machines in other factories.

Congress subjected the R. F. C. to the laws of the several States because it was satisfied that State Legislatures and State Courts were competent to determine when chattels had been so annexed as to become part of the land. The Pennsylvania rule is of long standing and differs little from the rule in other States. It is within the scope of the term "real property" as contemplated by Congress.

CONCLUSION

It is respectfully submitted that judgment should be affirmed.

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APPENDIX

CIVIL CODE, SECTION 659

Real or immovable property consists of:

1. Land;
2. That which is affixed to land;
3. That which is incidental or appurtenant to land;
4. That which is immovable by law; except that for the purposes of sale, emblements, industrial growing crops and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale, shall be treated as goods and be governed by the provisions of the title of this code regulating the sales of goods.

CIVIL CODE, SECTION 660

A thing is deemed to be affixed to land when it is attached to it by roots, as in the case of trees, vines, or shrubs; or imbedded in it, as in the case of walls; or permanently resting upon it, as in the case of buildings; or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts, or screws; except that for the purposes of sale, emblements, industrial growing crops and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale, shall be treated as goods and be governed by the provisions of the title of this code regulating the sales of goods.

REVENUE AND TAXATION CODE, SECTION 104

"Real estate" or "real property" includes:

(a) The possession of, claim to, ownership of, or right to the possession of land.

(b) All mines, minerals, and quarries in the land, all standing timber whether or not belonging to the owner of the land, and all rights and privileges appertaining thereto.

(c) Improvements.

REVENUE AND TAXATION CODE, SECTION 105

"Improvements" includes:

(a) All buildings, structures, fixtures, and fences erected on or affixed to the land, except telephone and telegraph lines.

(b) All fruit, nut bearing, or ornamental trees and vines, not of natural growth, and not exempt from taxation, except date palms under eight years of age.

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SUPREME COURT OF THE UNITED STATES.

No. 40.—October Term, 1945.

Reconstruction Finance Corporation, Successor to Defense Plant Corporation, Appellant, *vs.* County of Beaver, Pennsylvania.	Appeal from the Supreme Court of the Commonwealth of Pennsylvania.

[May 13, 1946.]

Mr. Justice Black, delivered the opinion of the Court.

By Section 10 of the Reconstruction Finance Corporation Act, as amended, 47 Stat. 5, 9; 59 Stat. 248, Congress made it clear that it did not permit states and local governments to impose taxes of any kind on the franchise, capital, reserves, surplus, income, loans, and personal property of the Reconstruction Finance Corporation or any of its subsidiary corporations.[1] Congress provided in the same section that "any real property" of these governmental agencies "shall be subject to State, Territorial, County, municipal, or local taxation to the same extent according to its value as other real property is taxed." The Supreme Court of Pennsylvania sustained the imposition of a tax on certain machinery owned and used in Beaver County, Pennsylvania, by the Defense Plant Corporation, an RFC subsidiary.[2] The question presented on this appeal from the Supreme Court judgment is whether the Supreme Court's holding that this machinery is "subject to" a local "real property" tax means that the Pennsylvania tax statute, 72 Purdon's Pennsylvania Stat. (1936) 5020-201, as applied conflicts with Section 10 of the Reconstruction Finance Corporation Act. This appeal, thus, challenges the validity of a state statute sustained by the highest court of the state and raises a substantial federal question. We have jurisdiction under 28 U. S. C. § 344(a) and appellee's motion to dismiss is denied.

[1] As to the Constitutional tax immunity of governmental properties see United States *v.* County of Allegheny, 322 U. S. 174. See also Pittman *v.* Home Owners Loan Corporation, 308 U. S. 21; Maricopa County *v.* Valley National Bank, 318 U. S. 357.

[2] 350 Pa. 520.

In 1941 Defense Plant Corporation[1] acquired certain land in Beaver County. It erected buildings on the property and equipped them with machinery and attachments necessary and essential to the existence and operation of a manufacturing plant for aircraft propellers. The plant, thus fully equipped, was leased to Curtiss-Wright Corporation, to carry out its war contracts with the government for the manufacture of propellers. Most of the machinery was heavy, not attached to the buildings, and was held in place by its own weight. Other portions of the machinery were attached by easily removable screws and bolts, and some of the equipment and fixtures could be moved from place to place within the plant. The lease contract with Curtiss-Wright authorized the government to receive and to replace existing equipment, and parts of the machinery appears to have been frequently interchanged and replaced as the convenience of the government required. The lease contract also provided that the machinery should "remain personalty notwithstanding the fact it may be affixed or attached to realty."

The government contends that under these circumstances the machinery was not "real" but was "personal" property, and that therefore its taxation was forbidden by Congress. The "real property" which Congress made "subject" to state taxation, should in the Government's view be limited to "land and buildings and those fixtures which are so integrated with the buildings as to be uniformly, or, at most, generally, regarded as real property." "Real property", within this definition would include buildings and "fixtures essential to a building's operations" but would not include fixtures, movable machinery, or equipment, which though essential to applicant's operations as a plant, are not essential to a building's operation as a building.

The county would, for tax purposes, define real property so as to treat machinery, equipment, fixtures, and the land on which a manufacturing establishment is located as an integral real property unit. This is in accord with the view of the state's supreme court which made the following statement in sustaining the tax

[1] By joint resolution of Congress, Ch. 215, Public Law 109, 79th Congress, Defense Plant Corporation was dissolved and all of its functions, powers, duties and liabilities were transferred to Reconstruction Finance Corporation. Pursuant to this joint resolution this Court granted a motion to substitute Reconstruction Finance Corporation as party appellant in succession to Defense Plant Corporation.

here involved: "It has long been the rule in Pennsylvania that 'whether fast or loose, therefore, all the machinery of a manufactory which is necessary to constitute it; and without which it would not be a manufactory at all, must pass for a part of the freehold' . . . Appellant's machinery, being an integrated part of the manufactory, and so of the freehold, was therefore taxable" under Pennsylvania's definition of real property. This interpretation of Pennsylvania's tax law is of course binding on us. But Pennsylvania's definition of "real property" cannot govern if it conflicts with the scope of that term as used in the federal statute. What meaning Congress intended is a federal question which we must determine.

The 1941 Act does not itself define real property. Nor do the legislative reports or other relevant data provide any single decisive piece of evidence as to Congressional intent.[4] Obviously it could have intended either, as the government argues, that content be given to the term "real property" as a matter of federal law, under authoritative decisions of this Court, or, as the county contends, that the meaning of the term should be its meaning under local tax laws so long as those tax laws were not designed to discriminate against the government.

In support of its contention that a federal definition of real property should be applied, the government relies on the generally accepted principle that Congress normally intends that its laws shall operate uniformly throughout the nation so that the federal program will remain unimpaired. *Jerome* v. *United States*, 318 U. S. 101, 104; *Commissioner* v. *Tower*, No. 317, decided Feb. 25, 1946. But Congress in permitting local taxation of the real property, made it impossible to apply the law with uniform tax consequences in each state and locality. For the several states, and even the localities within them, have diverse methods of assessment, collection, and refunding. Tax rates vary

[4] The 1941 amendments to Section 10 added, among others, the following provision: "... such exemptions shall not be construed to be applicable in any state to any buildings which are considered by the laws of such state to be personal property for taxation purposes." The government contends that this indicates a Congressional intent to establish a uniform meaning of the term "real property" regardless of local rules. But the addition also might be taken to indicate that Congress understood that without it under the language of Section 10 the local rule would be followed with respect to taxing buildings. In our opinion the addition of the above-quoted language does not tend to lead to one conclusion or the other.

widely. To all of these variable tax consequences Congress has expressly subjected the "real property" of the Defense Plant Corporation. In view of this express provision the normal assumption that Congress intends its law to have the same consequences throughout the nation cannot be made. Furthermore, Congress, had it desired complete nationwide uniformity as to tax consequences, could have stipulated for fixed payments in lieu of taxes, as it has done in other statutes.[5] Nor can we see how application of a local rule governing what is "real property" for tax purposes would impair the Congressional program for the production of war materials any more than the program would be impaired by the action of Congress in leaving the fixing of rates of taxation to local communities.

We think the Congressional purpose can best be accomplished by application of settled state rules as to what constitutes "real property" so long as it is plain, as it is here, that the state rules do not effect a discrimination against the government, or patently run counter to the terms of the Act. Concepts of real property are deeply rooted in state traditions, customs, habits, and laws. Local tax administration is geared to those concepts. To permit the states to tax, and yet to require them to alter their long-standing practice of assessments and collections, would create the kind of confusion and resultant hampering of local tax machinery which we are certain Congress did not intend. The fact that Congress subjected Defense Plant Corporation's properties to local taxes "to the same extent according to its value as other real property is taxed" indicated an intent to integrate Congressional permission to tax with established local tax assessment and collection machinery.

Affirmed.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

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[5] See, *e. g.*, 42 U. S. C. 1546. See also list of Acts in *Federal Contributions To States and Local Government Units with Respect to Federally Owned Real Estate*, House Document No. 216, pp. 39,41.